

**JOINT LEGISLATIVE SUNSET
REVIEW COMMITTEE FINDINGS AND
RECOMMENDATIONS**

**Review and Evaluation of the
Physical Therapy Board of California**

**Report to the
Department of Consumer Affairs**

APRIL, 1998

JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE

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IDENTIFIED ISSUES, RECOMMENDATIONS, AND FINAL ACTION OF THE JOINT LEGISLATIVE SUNSET REVIEW COMMITTEE REGARDING THE PHYSICAL THERAPY BOARD

ISSUE #1. Should the licensing of physical therapists be continued?

Recommendation: *Both the Department and Committee staff recommended that the State continue to license physical therapists.*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

Comment: Regulation of physical therapy is made necessary by the critical roles performed by physical therapists (PTs) and the potential for harm to the public. Needless or excessive treatments could result in physical or financial harm to patients. A treatment plan inappropriate for the patient's condition, or incompetently performed, could result in injury. As independent health care practitioners, physical therapists perform evaluations, develop and implement treatment plans, use physical, chemical and other elements as part of the treatment. There would be significant potential for harm – ranging from physical and mental harm (including permanent damage or disability) to fraud – to consumers without the regulation of physical therapists. Physical therapists are not authorized to diagnose disease.

The State regulates the physical therapy profession to protect the public from incompetent, untrained and unknowledgeable practitioners, and from practitioners with criminal backgrounds that could pose a potential threat to patients. The growing in-home health care trend increases the potential for theft, fraud (billing for services not rendered) and sexual misconduct by unscrupulous practitioners.

All fifty states license, and no states have deregulated, physical therapists. Federal regulations require licensure of physical therapists who treat Medicare patients, and the Department of Health Services requires licensing for services provided to Medi-Cal patients.

ISSUE #2. Should the approval (licensing) of physical therapist assistants be continued?

Recommendation: *The Department did not address this issue. Committee staff*

recommended the continued regulation of physical therapist assistants by the Physical Therapy Board.

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: Forty states regulate physical therapist assistants – about half through licensure and half certification. A physical therapist assistant (PTA), under the supervision of a licensed physical therapist, may assist in the treatment of patients.

Generally, a physical therapist assistant must be a graduate of an accredited post-secondary institution (associate degree) and have completed academic and clinical experience requirements, and pass the National Physical Therapist Assistant Examination and the California Law Examination.

ISSUE #3. Should the Board continue to certify physical therapists to perform electromyography?

Recommendation: *The Department did not address this issue. Committee staff recommended that the Physical Therapy Board evaluate the feasibility of returning that function to the professional association. A sunset date of two years should be placed on certification program for electromyography.*

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: The B&P Code authorizes the Physical Therapy Board issue a certification to a physical therapist to perform electromyography. Electromyography is the evaluation of neuromuscular performance. Upon specified additional training, and Board certification, physical therapists may practice the specialties of electroneuromyography and kinesiological electromyography. These specialties involve the use of technical instruments and procedures to conduct tests and provide information to physician and surgeons for use in making a diagnosis.

The Board indicates that the professional association offers an examination for certification in electrophysiology, and the Board is considering whether certification by the association would provide for the same level of public protection as certification by the Board.

ISSUE #4. Should other licensed health care practitioners, who perform physical therapy under their scope of practice, be permitted to supervise physical therapy assistants to assist in performing physical therapy?

Recommendation: *The Department did not address this issue. Committee staff recommended that any proposal for other health care practitioners to supervise physical therapy assistants be required to go through a “sunrise” process, similar to that of sunset review, required under Section 9148 et seq. of the Government Code, and by the rules of the Senate Business and Professions Committee.*

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: Currently, a physical therapist assistant may assist in the provision of physical therapy, provided the assistance is under the supervision of a physical therapist licensed by the Board. Other health care practitioners, such as physicians and surgeons, who may perform physical therapy under their scope of practice are not permitted to supervise physical therapy assistants.

After more than three years of hearings on how physical therapist assistants should be supervised, the Board implemented new regulations in 1996, which significantly revised the supervision requirements for PTAs. However, the requirement, that a licensed physical therapist must at all times be responsible for all physical therapy services provided by the physical therapist assistant, did not change.

ISSUE #5. Should legislation be sought, as recommended by the Board, that would require all health care providers to post in their offices a notice on how and where to file complaints.

Recommendation: *The Department did not address this issue. Committee staff concurred with the recommendation of the Board to require licensed physical therapists to display their licenses or registrations in the locality they are working with patients, and to notify them who they can contact if they have any questions or complaints regarding the licensee.*

Vote: *The Joint Committee adopted the recommendation of the Board and Committee staff by a vote of 6-0.*

Comment: The Physical Therapy Board recommends that the Department of Consumer Affairs should seek legislation that would require all health care providers to post in their offices a notice on how and where to file complaints, as is required of some other professions (automotive repair dealers).

This proposal appears to be a well-aimed and sharply-focused consumer information tool, that makes essential information available to the individuals that need it the most.

ISSUE #6. Should sections 2662-2669 of the Business and Professions Code, which requires the Physical Therapy Board to provide a diversion program, be sunsetted?

Recommendation: *The Department recommended that the Physical Therapy Board, the Medical Board, the Department, other boards with diversion programs, and the Legislature research an appropriate approach to privatizing diversion programs with*

special attention to the existing participants. Committee staff concurred with this recommendation and recommends that the Medical Board, in conjunction with other boards providing diversion programs, report to the Joint Committee by September 1, 1999, on a plan to privatize diversion programs.

Vote: *The Joint Committee did not adopt the recommendation of the Department and Committee staff by a vote of 3-3.*

Comment: The Board's diversion program is currently administered by Occupational Health Services, Inc. (OHS) Health Services Professionals Program through contractual arrangement. The Board has had 6 participants in the diversion program in the past four years, and has had 3 graduates. None of the licensees who have successfully completed the diversion program have had similar, subsequent disciplinary violations.

The Board should speak to the possibility of sunseting the statutory requirement to sponsor and administer the diversion program, so that these functions may be privatized.

It would appear that there is no reason for the Board to duplicate what the private sector is adequately providing. There are many non-governmental substance abuse rehabilitation programs available to physical therapists. There is no evidence that state licensing Boards can administer recovery programs better than private providers.

ISSUE #7. Should the licensing law be amended to require licensees to report criminal convictions to the Board upon license renewal?

Recommendation: *The Department did not address this issue. Committee staff recommended that the Board of Physical Therapy require licensees to report criminal convictions to the Board when they renew their license.*

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: The Board points out that criminal activity by licensing applicants is automatically reported by the Department of Justice as a result of fingerprint checks. However, there is no requirement to report criminal convictions to the licensing Board. In recent years, the Legislature has seen fit to require a number of licensees to report to the licensing authority, upon renewal, any criminal convictions – accountants and court reporters are recent examples. It would appear to be an enhancement of the Board's enforcement and disciplinary process to make such a requirement upon physical therapists.

ISSUE #8. Should the Board implement an electronic tracking system to obtain timely, accurate and complete licensing application data?

Recommendation: *The Department did not address this issue. Committee staff recommended that the Board of Physical Therapy should, with due regard to budgetary*

constraints, move toward implementing an electronic tracking system to obtain timely, accurate and complete licensing application data as long as the Board complies with all mandated requirements to implement any new technology project.

Vote: *The Joint Committee adopted the recommendation of Committee staff by a vote of 6-0.*

Comment: The Joint Committee has historically supported the application of technology when it will improve the efficiency and effectiveness of any Board. However, the Board must comply with the requirements of the Government Code and the State Administrative Manual to implement an electronic tracking system.

The Board states that its application process is not automated, and does not have an applicant tracking system. It would appear that efficiencies could be achieved by better tracking the application process. The Board lists the following summary of application processing times:

	Physical Therapists	Physical Therapist Assistants
Minimum	46 days	67 days
Median	88 days	127 days
Maximum	372 days	166 days

The Board states that over the last four years, the average time between submission of an application and the examinations has been 124 days. The average time between the examinations and when an individual receives the license has been 132 days.

ISSUE #9. Should the Physical Therapy Board be continued, or should its operations and functions be assumed by the Department of Consumer Affairs?

Recommendation: *Both the Department and Committee staff recommended that the Physical Therapy Board continue as the agency responsible for the regulation of the practice of physical therapists. Committee staff recommend that the sunset date of the Board be extended for four years (to July 1, 2003).*

Vote: *The Joint Committee adopted the recommendation of the Department and Committee staff by a vote of 6-0.*

ISSUE #10. Should the composition of the Physical Therapy Board be changed to increase public representation and create a public majority board?

Recommendation: *This Board has 6 members, of which 3 are licensed physical therapists and 3 are public members. The Department generally recommends a public member majority and an odd number of members for regulatory boards. For this Board, the Department recommended an increase in public membership to improve balance*

consistent with those guidelines. Committee staff concurred with the Department, and recommends adding one more public member to the Board. The composition of the Board would increase to 7 members, with 4 public members and 3 licensed physical therapists.

Vote: *The Joint Committee did not adopt the recommendation of the Department and Committee staff. The Joint Committee adopted a substitute recommendation by a vote of 5-1, to change the composition of the Board to 7 members, but with 3 licensed physical therapists, 1 physical therapist involved in the education of physical therapists, and 3 public members.*

Comment: The Physical Therapy Board believes that the Board's current six-member composition is marginal in terms of representing both the public and the profession, and in accomplishing a quorum to conduct its mandated business and adequately consider disciplinary issues.

The Board states that with only six members, who are often not all in attendance at the same time, and occasional vacancies, it is sometimes difficult to achieve a quorum, and often not possible for current members to meet all the demands and requirements of the position. The Board regularly discusses disciplinary cases and makes decisions on licensing and enforcement issues and believes, in particular, that this important function of the Board requires more participation by a larger board.